DEPARTMENT OF REGULATORY AGENCIES

Division of Insurance

3 CCR 702-3

Repealed and Repromulgated in Full Regulation 3-5-1

TITLE INSURANCE

Section 1 Authority

This regulation is promulgated pursuant to the authority of §§ 10-1-109, 10-2-104, 10-3-1110, 10-4-404(1), 10-11-118, and 10-11-124 (2), C.R.S.

Section 2 Scope and Purpose

The purposes of this regulation are: (1) to interpret and implement the title insurance code found in article 11 of title 10 of the Colorado Revised Statutes; (2) to promote the public welfare by proscribing practices which, if not proscribed, could result in excessive, inadequate, or unfairly discriminatory rates for title insurance, and which practices, if not proscribed, could allow unlawful inducements, deceptive trade practices, and discriminatory acts, all of which are detrimental to the consumer and, in the aggregate, may threaten the solvency of title insurance companies and title insurance agents; and (3) to ensure to the consumers the benefits of competition in the area of title insurance.

In Colorado, the majority of real estate transactions require a policy of title insurance. In most instances, a consumer makes the selection of a title entity not through comparison-shopping, but rather through a referral or recommendation from a real estate broker, lawyer, developer, lender, or mortgage broker. Thus, the competition for title insurance business is not at the level of the ultimate consumer, but rather at the level of the referring parties – the settlement producers.

Further, increasing consumer understanding of title insurance is difficult. Since most consumers will only need to purchase title insurance a few times in their lives, there is little economic incentive on the average consumer's part to learn about title insurance. These factors may cause a consumer to be vulnerable to excessive rates, deceptive trade practices, and discriminatory acts.

This regulation addresses the issues above. Its purpose is protecting the consumer, and to ensure that the title industry is freely and fairly competitive and provides valuable products and services to consumers at reasonable rates.

Section 3 Applicability

This regulation governs title entities and does not extend the regulatory authority of the Colorado Division of Insurance (“Division”) to any person other than title entities or persons transacting the business of title insurance.

Section 4 Definitions

A. "Affiliate” means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with a title entity.

B. “Affiliated business arrangements” shall have the same meaning as set forth in § 10-11-102 (1), C.R.S. Affiliated business arrangements are distinct from controlled business arrangements, which are defined by § 10-2-401(4), C.R.S.

C. "Associate" shall have the same meaning as set forth in § 10-11-102 (2.5), C.R.S.

D. “Available for immediate withdrawal as a matter of right” has the same meaning as in § 38-35-125 (1) (c), C.R.S.

E. “Closing agent” means any and all persons contracted to perform closing and settlement services on behalf of a title entity.

F. “Closing instructions” or “written instructions” shall mean a document, signed by all necessary parties to a transaction, which purports to direct a title entity in the completion of settlement services.

G. “Commitment” or “title commitment” shall mean a report furnished in connection with an application for title insurance, which is a statement of the requirements, terms, and conditions upon which the title insurance company is willing to insure an interest in subject property.

H. “Core title services” shall have the same meaning as set forth in the United States Department of Housing and Urban Development (HUD) RESPA Statement of Policy 1996-4.

I. “Farm package” means a compilation of information pertaining to ownership and characteristics of property within a specific geographic area provided in any format, e.g., labels, envelopes, postcards and/or electronic media. Farm package materials generally include, but are not limited to, names and addresses, profiles, property characteristics, demographic information, and/or census information.

J. “Fee” means, for purposes of this regulation only, the price other than the Rates (see subparagraph O below) assessed to a consumer by a title entity in rendering services pursuant to the business of title insurance as defined in § 10-11-102, C.R.S.

K. "Financial institution" has the same meaning as set forth in § 38-35-125, C.R.S.

L. “Generic exceptions” shall mean broad exceptions on a commitment or policy of title insurance that do not refer to specific documents and are not “standard or preprinted exceptions”.

M. “Ownership and encumbrance report” (“O&E”) means information identifying the last recorded owner, legal description and recorded deeds of trust or mortgages of a particular real property address available from public records.

N. “Person” has the same meaning as that in § 10-2-103(8), C.R.S.

O. “Rate”, for purposes of this regulation, means expenses as defined in § 10-4-402(1.5), C.R.S., together with the pure premium rate as defined in § 10-4-402 (2.4), C.R.S. and includes production expenses and commissions, and in accordance with § 10-4-403, C.R.S.

P. “Settlement producer” shall have the same meaning as set forth in § 10-11-102 (6.5), C.R.S., and does not include insurance producers as defined in § 10-2-103 (6), C.R.S.

Q. “Settlement services” shall have the same meaning as in §10-11-102(6.7), C.R.S.

R. “Standard or preprinted exceptions” shall mean those regional exceptions on title commitments and policies dealing with parties in possession, survey matters, mechanics liens, unpatented mining claims, patent reservations, water rights, mineral rights, taxes, and rights or encumbrances not appearing in the public record, as approved by the title insurance company.

S. “TBD commitment” shall mean a commitment furnished prior to a full application for title insurance, in which all parties and/or details concerning a transaction are not yet known (e.g. buyer, seller, sales amount, loan amount, etc.)

T. “Title insurance agent” shall have the same meaning as in § 10-11-102(9), C.R.S.

U. "Title insurance company” shall have the same meaning as in § 10-11-102(10), C.R.S.

V. "Title entity" shall mean title insurance agents, title insurance agencies and title insurance companies.

Section 5 Rules Regarding Rates and Fees

A. Every title entity shall make readily available for inspection by the public a schedule of effective rates and fees and applicable rules for regularly issued title insurance policies and regularly imposed closing and settlement charges, including endorsements, guarantees and other forms of insurance coverage. Either the schedule or a notice explaining the schedules’ availability shall be displayed in a public place in the title entity’s offices. Copies of such schedules shall be furnished to the public upon request. The title entity may impose a reasonable charge for the copies and shall provide the copies within a reasonable time.

B. All rate cards and schedules of effective rates and fees shall denote, in a clear and conspicuous manner, the title insurance company that has filed the insurance premiums shown.

C. All title insurance companies shall submit a complying filing electronically to the Division, including justification for any new or amended rate or fee and an effective date that is at least thirty (30) days after the date the division receives the filing electronically. The justification for the new or amended rate or fee shall include but not be limited to:

1. The expense provisions and demonstrate how these provisions are accounted for in the final rate or fee;

2. Expected loss and loss ratios;

3. Rate history listing the effective date and amount of any rate or fee changes made in the past three (3) years;

4. Methodologies and material assumptions in developing the rate or fee;

5. Any other determining factor used to develop the final rate or fee.

D. All title agencies shall submit a complying filing directly to the Division, including justification for any new or amended fee with an effective date that is at least thirty (30) days after the date the division receives the filing. The justification for the new or amended fee shall include but not be limited to:

1. The expense provisions and demonstrate how these provisions are accounted for in the final fee;

2. Actual expenses associated with the fee;

3. Any other determining factor used to develop the final fee.

E. The title entity may charge additional fees when unusual conditions are encountered, special or unusual risks are insured against and for special services rendered in connection with the issuance of a title policy and/or closing and settlement services. If additional fees are charged the title entity shall, in its rate schedule, disclose the terms and conditions for imposing said additional fees.

F. Title entities may place on file different rates, fees, or rules for title policies and/or closing and settlement services covering property in different counties, and shall include the effective date of the rates, fees or rules in the schedule.

G. No rate or fee can be charged unless it is on the currently effective schedule at the time that the commitment and/or policy or closing and settlement service is contracted. Title insurance companies may not use different rates for different title insurance agents for the same risk in the same county.

H. Schedules shall not apply to title commitments and/or policies or closing and settlement services contracted for prior to the effective date of such schedule.

I. No title entity shall quote any rate or fee or closing and settlement service charge to any person which is more or less than that currently available to others for the same type of title policy or service in a like amount, covering property in the same county and involving the same factors as set forth in its then current schedule of rates and fees.

J. Notwithstanding the foregoing, a title insurance company shall not be responsible for a title agent's failure to comply with this Section 5, unless that title company failed to meet the reasonableness standard set forth in Section 7(M) of this regulation.

Section 6 Rules Regarding Standards of Conduct for Title Insurance Entities

A. In addition to any and all acts which may be proscribed elsewhere in Title 10, no title entity shall pay, furnish, or agree to pay or furnish, either directly or indirectly, or through affiliates or associates, any commission or any part of the fees or charges or remuneration in any form, in connection with any past, present, or future title insurance business, any closing and settlement services or any other title insurance business except for services actually rendered, as defined in § 10-11-108(1)(d) and (2), C.R.S., to or on behalf of any of the following:

1. Any settlement producer;

2. Any owner or prospective owner, lessee or prospective lessee of real property or any interest in the real property;

3. Any obligee or prospective obligee of any obligation secured or to be secured either in whole or in part by real property or any interest in the real property; or,

4. Any person who is acting as or who is in the business of acting as agent, representative, attorney or employee of any of the persons described in 1, 2 or 3 above, or any other party to the instant transaction.

B. The factors the Division will consider when determining whether remuneration for the referral of title insurance business exists or will exist, include, but are not limited to:

1. Whether the costs of any settlement producer is being or will be defrayed by the title entity's actions;

2. Whether the remuneration is being or will be given to a discrete settlement producer as opposed to a bona fide association of settlement producers;

3. Whether a pattern or practice of referrals to the title entity exists or will exist; and

4. Consideration of the advertising value of the remuneration to the title entity.

C. While it is expressly recognized that advertising, marketing, or maintenance and development of client relationships are bona fide business practices, Colorado law prohibits such expenditures when they are remuneration for the referral of title insurance business.

D. The following is a partial, but not all-inclusive, list of acts and practices which the Division considers per se unlawful inducements proscribed by § 10-11-108, C.R.S.:

1. Giving, or attempting to give to a settlement producer discounts primarily based on the volume of business the settlement producer refers, or may refer, to the title entity. Notwithstanding the foregoing, discounts are permitted only where justified in the title entity's rate filing made pursuant to § 10-4-404, C.R.S., the discount is properly filed with the Division, and the filing does not directly or indirectly include or result in any form of prohibited remuneration under § 10-11-108 C.R.S.

2. Violation of Section 7(I) of this regulation concerning "good funds".

3. Except as otherwise permitted in Section 7 of this regulation, the disbursement of closing and settlement services funds before all necessary conditions of the transaction have been met.

4. Furnishing a title commitment without charge or at a reduced charge, unless, within a reasonable time after the date of issuance, appropriate title insurance coverage is issued for which the scheduled rates and fees are paid. Any title commitment charge must have a reasonable relation to the cost of production of the commitment and cannot be less than the minimum rate or fee for the type of policy applied for, as set forth in the insurer's current schedule of rates and fees. This provision does not apply where a title commitment is furnished in good faith in furtherance of a bona fide sale, purchase or loan transaction that for good reason is not consummated.

5. Furnishing a TBD commitment without a charge that bears a reasonable relation to the cost of production of the TBD commitment. Any such charge must be properly filed and justified in accordance with Section 5 of this regulation. While such charge for the production of a TBD commitment must be made at the time the TBD commitment is provided, nothing in this provision shall prohibit a company from crediting a charge paid for a TBD commitment to the final premiums or fees paid upon the consummation of the transaction contemplated by such TBD commitment.

6. Paying for, furnishing, providing, subsidizing, waiving or offering to pay, furnish, provide, subsidize or waive, to or for any of the persons described above in this Section 6 all or any portion of the following:

   a. Advertising or promotional material or activity, including, but not limited to, any obligation, product, service, seminar, convention or publication for the benefit of any settlement producer, or ostensibly for the benefit of the title entity, the end result of which is the substantial subsidization of an obligation, product, service, seminar, convention or publication of any settlement producer. This prohibition applies to advertisements placed in subdivision or tract brochures, multiple listing services or books, exchange bulletins, newsletters, information sheets, programs, announcements and periodicals or similar matter associated with meetings, seminars or conventions of such settlement producers as well as registers and directories of such persons;

   b. Any and all fees or costs, including but not limited to room, registration, and speaker fees associated with classes, seminars, conventions, or any form of continuing education on behalf of or for the benefit of any settlement producer, except as permitted in section 6(F)(5) of this regulation;

   c. The cancellation fee for a title commitment or other fee before or after inducing such settlement producer to cancel an order with another title entity;

   d. Furniture, equipment, office supplies, telephones, or automobiles, including any portion of the cost of renting, leasing, operating or maintaining the above-mentioned items, unless such title entity pays no more than its allocable share of the actual costs for such goods and services commensurate with the actual usage of such goods services, and facilities actually furnished;

   e. Rent to or from any settlement producer for premises wherever situated, regardless of the purpose, at a rent that is materially in excess of or materially below market value when compared with the amount paid per square foot for comparable space in the geographic area;

   f. Incentives, gifts, prizes, retreats, transportation and vacations, including, but not limited to other similar things of value;

   g. Salary, compensation or services, except for services actually rendered, including, but not limited to:

      (1) All or any part of the time or productive effort of any employee or affiliate of the title entity (e.g., office manager, escrow officer, secretary, clerk, messenger) to any settlement producer at less than the fair market value of the services;

      (2) Compensation of a settlement producer or associate of a settlement producer;

      (3) The salary or any part of the salary of a relative of any settlement producer which payment is in excess of the reasonable value of the work actually performed by such relative on behalf of the title entity; and

      (4) Services by any settlement producer, which services are required to be performed by such settlement producer in his or her professional

capacity, and for which the settlement producer would not normally charge the title entity.

7. Paying a settlement producer or other person described in Section 6 of this regulation to make an inspection and appraisal of property, except for services actually rendered.

8. Any transaction in which any person receives, or is to receive, securities of the title entity or its affiliates at prices below the normal market price, or bonds or debentures which guarantee a higher than normal interest rate, whether or not the consummation of such transaction is directly or indirectly related to the number of closing and settlement services or title orders coming to the title entity through the efforts of such person.

9. Charging less than the scheduled rate or fee for a specified title or closing and settlement service, or for a policy of title insurance.

10. Waiving, or offering to waive, all or any part of the title entity's established rate or fee for services which are not the subject of rates or fees filed with the Commissioner or are required to be maintained on the entity’s schedules of rates and fees.

11. Furnishing information, including but not limited to, farm packages, o&es, appraisals, estimates of income production potential, information kits or similar packages containing information about one or more parcels of real property without both making a charge that is commensurate with the actual cost of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge. While such charge for the production of an ownership and encumbrance report must be made at the time the report is provided, nothing in this provision shall prohibit a company from crediting a charge paid for an ownership and encumbrance report to the final premiums or fees paid upon the consummation of the transaction contemplated by such ownership and encumbrance report.

12. Subsidizing the production of free o&es, farm packages, information kits or similar packages containing information about one or more parcels of real property, whether through sponsorship, advertising, or any other direct or indirect method of payment to a company or organization that is able to produce such materials but is not subject to the rules and regulations of the division.

13. Designing, producing, printing, distributing or causing to be designed, produced, printed, or distributed on behalf of any settlement producer postcards, flyers, home information books, business cards, or any other product used to market to prospective clients without both making a charge that is commensurate with the actual cost of the work performed and the material furnished, and making a good faith effort to collect payment in the amount of such charge.

14. Accumulating, crediting or deferring the charge for a title policy or closing and settlement services in order to qualify the charge for said policy and a later transaction for a lower rate, except to the extent that a properly filed and justified rate or fee is in place for a deferred rate.

15. Making or guaranteeing or offering to make or guarantee, directly or indirectly, any loan to any settlement producer, regardless of the terms of the note or guarantee.

16. Guaranteeing, or offering to guarantee, the performance or services of any settlement producer.

17. Providing, or offering to provide, either directly or indirectly, a "compensating balance" or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any settlement producer, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.

18. Paying for, or offering to pay for, the fees or charges of an outside professional (e.g., an attorney, engineer, appraiser, or surveyor) whose services are required by any settlement producer to structure or complete a particular transaction.

19. Providing, or offering to provide, non-title insurance services (e.g. computerized bookkeeping, forms management, computer programming, REO or foreclosure services, or any similar non-title insurance benefit) to any settlement producer at less than the fair market value of the services.

20. Paying for or furnishing, or offering to pay for or furnish, any business form to any settlement producer other than a form regularly used in the conduct of the title entity's business which form is furnished solely for the convenience of the title entity and does not constitute a direct monetary benefit to any settlement producer.

21. Advancing or paying into escrow, or offering to advance or pay into escrow, any of the title entity funds or "closing short", except as provided in Section 7.

22. Charging less than the actual cost of the closing and settlement service of the title entity.

E. Affiliated Business Arrangements:

1. Section 10-11-124 (1)(a), C.R.S. permits an affiliated business arrangement where the person referring the business to the affiliated business arrangement receives payment only in the form of a return on an investment and where it does not violate the provisions of § 10-11-108 (1), C.R.S. Affiliated business arrangements which are tied to the referral of title insurance business are a per se unlawful inducement proscribed by § 10-11-108 (1), C.R.S., and constitute a violation of § 10-11-124 (1) (a), C.R.S. The Division will make determinations as to compliance with these sections on a case-by-case basis. Prohibited arrangements include, but are not limited to the following:

    a. Arrangements in which the amount of the return on the ownership interest is directly or indirectly conditioned on the number of or premium volume of referrals made, such as where owners or stockholders receive dividends or bonuses based on the number of referrals generated or achievement of certain referral plans or goals;

    b. Arrangements in which the ownership interests themselves are conditioned on the referrals, such as where the stock certificates are distributed based on the number of or premium volume of the referrals made in the past or to be made in the future;

    c. Arrangements in which owners or stockholders receive anything of value that is directly tied to the referral of business;

    d. Arrangements in which employees, agents, or associates of the owners or stockholders receive incentives, inducements, or other things of value directly tied to the referral of business;

e. Arrangements in which the cost of the ownership opportunity is not equivalent for all investors;

f. Arrangements in which no formal business plan is developed and/or the formation of such arrangement is designed to obscure kickbacks in the form of dividends or other considerations and not for a bona fide business reason.

2. "Sham" affiliated business arrangements are prohibited.

a. In considering whether or not a title entity is a legitimate affiliated business arrangement or a "sham" affiliated business arrangement the factors the Division will consider include but are not limited to the following:

(1) Whether the title entity is structured and operated in a manner that evidences a good faith effort to conform to applicable title insurance laws.

(2) Whether the title entity maintains a separate and distinct, verifiable physical location. In the event the title entity shares office space with a settlement producer, the Division shall consider the factors set forth in Paragraph F (7) (a) through (e) of this Section, inclusive, in determining compliance with this provision. In the event the title entity shares office space with another title entity the Division shall consider the following factors:

(a) Whether the title entity's space is clearly and conspicuously identified separately from another title entity's space;

(b) Whether the title entity's space can be readily locked and secured independently from another title entity's space; and

(c) Whether the title entity's space is directly and easily accessible to the public without entering another title entity's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises.

(3) Whether the title entity was established with at least the minimum capitalization required pursuant to § 10-11-116 (2), C.R.S. and maintains such minimum capitalization at all times.

(4) Whether the title entity shares employees with another title entity, settlement producer or other affiliated entity.

In determining whether or not an individual is an employee of the title entity, the Division may consider the following factors:

(a) Whether the title entity issues, or causes to be issued, an annual Internal Revenue Service Form W-2 to the employee;

(b) Whether the employee is subject to the title entity's supervision and control;

(c) Whether the employee devotes fixed periods of time exclusively to the business of the title entity or whether the employee is

compensated on a fluctuating per-hour basis or per-transaction basis;

(d) Whether the employee is physically located in the office of the title entity.

(5) Whether the title entity performs core title services, by and through its employee(s). In accordance with the HUD Statement of Policy 1996-4 the title entity shall not collect premiums for services not actually performed.

(6) What, if any, title or settlement services the title entity has contracted to other sources.

b. In addition to the above factors the Division will consider the guidelines set forth in the HUD Statement of Policy 1996-2, Sham Controlled Business Arrangements (commonly referred to as the "HUD 10-Step Sham Test"), which Statement is incorporated herein by reference. The Division may also consider any other relevant facts and circumstances relating to the above factors and to those elements set forth in the 10-Step Sham Test.

3. An affiliated business arrangement shall comply with the disclosure requirements set forth in § 10-11-124 (1) (b), C.R.S. Such disclosure shall be in accordance with the "Real Estate Settlement Procedures Act", 12 U.S.C. sec 2601, et seq. The title entity shall maintain documentation of such disclosure in its title and/or escrow file for no less than a period of seven (7) years.

F. The following is a partial, but not all-inclusive, list of acts and practices rendered by title entities which the Division does not consider to be per se unlawful inducements proscribed by § 10-11-108, C.R.S., to the extent the activities and information are provided on a non-discriminatory basis, that such acts and practices have not been provided in a manner to circumvent the intent of this regulation, and are in no way conditioned, directly or indirectly, upon referrals:

1. Furnishing a single copy of the last recorded vesting deed for a parcel of real property to a settlement producer. Said deed may be furnished without charge, provided and to the extent that:

a. The document is provided as presented by the public records and nothing of material value is added to the information; and

b. The document furnished contains no advertising or promotional material on behalf of the settlement producer to whom the information is provided.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons and assessed on a non-discriminatory basis.

2. Furnishing a copy of an instrument of public record in connection with the issuance of a commitment, including but not limited to a deed, deed of trust, mortgage, judgment, lien, contract, map, plat, declaration of covenants, conditions, and restrictions, or any other document purporting to affect a parcel of real property. Said information may be furnished without charge, provided and to the extent that:

a. The information is given in concert with the issuance of a commitment for title insurance; and

b. The information is provided as presented by the public records and nothing of material value is added to the information; and

c. The information furnished contains no advertising or promotional material on behalf of the settlement producer to whom the information is provided.

Nothing in this regulation prohibits title entities from imposing a reasonable fee for any of the above information, or for additional information, provided the fee is the same for all persons and assessed on a non-discriminatory basis.

3. Providing an estimated quote for title insurance premiums and settlement service fees for a specific real estate transaction that will be provided to the ultimate consumer in order to compare prices for settlement services. Such a quote need not comply with the reasonable search and examination standards required by § 10-11-106, C.R.S. or Section 7(A) of this regulation, provided said quote is not binding in the event a reasonable search and examination of the property records reveals a circumstance in which the quoted rate or fee must be amended.

4. Issuing an insured closing letter or closing protection letter that substantially conforms to an American Land Title Association ("ALTA") promulgated form.

5. Publishing or printing educational information that is primarily related to the business of title insurance or conducting or coordinating educational seminars related to the business of title insurance for the benefit of settlement producers, including the absorption of reasonable costs associated with providing such materials, classes, or seminars, as long as consistent with all other provisions of this regulation, including Section 6(D)(6). Nothing herein shall permit free materials, classes, or seminars on any subject that is not related to the business of title insurance.

6. Advertising, marketing, and maintenance and development of client relationships, when performed in the bona fide and legitimate promotion of the title entity's business, as long as consistent with all other provisions of this regulation, including Section 6(D)(6), including but not limited to:

a. Giving things of reasonable value to a bona fide trade or industry association.

b. Providing advertising novelties and promotional gift items that bear the name of the title entity (but not the name of the recipient) to settlement producers, provided and to the extent that:

(1) The items constitute advertising directed impersonally at the general consumer public, and are provided to settlement producers on a non-discriminatory basis; and

(2) The items are valued at no more than $10; and

(3) Distribution, if by mail, is made on a nonselective basis to all persons known or reasonably believed to be members of the business or professional group in the natural geographic area or political subdivision toward which the advertising effort is directed.

c. Customer entertainment provided that:

(1) It is interactive, personal contact between a title entity representative who is physically present and a settlement producer; and

(2) It is conducted to promote title insurance products and services of the title entity; and

(3) Any benefit conferred to a settlement producer is incidental to the promotion of the title entity's title insurance products and services; and

(4) The expenditure bears a reasonable relationship to the benefit derived by the title entity from the activity.

7. Utilizing office space or other accommodations within a settlement producer's office or business space, provided that rent is paid in accordance with Section 6(D)(6)(e) and the arrangement is consistent with the intent of this regulation. In determining whether an office or accommodations sharing arrangement is permitted under this regulation, the Division shall consider the following factors, including but not limited to:

a. Whether written notice has been provided to the consumer disclosing that an office or accommodations sharing arrangement exists and that the consumer has the right to shop for and use another title entity and/or settlement producer. Such notice shall substantially conform to and comply with the notice requirements of § 10-11-124, C.R.S. and the "Real Estate Settlement and Procedures Act", 12 U.S.C. Sec 2601, et seq.;

b. Whether the title entity's space is clearly and conspicuously identified separately from the settlement producer's space;

c. Whether the title entity's space can be readily locked and secured independently from the settlement producer's space;

d. Whether the title entity's space is directly and easily accessible to the public without entering the settlement producer's primary workspace, such as where the title entity's entrance leads to or from a common area or the exterior of the premises; and

e. Whether the title entity, directly or indirectly pays for or subsidizes the settlement producer's expenses as proscribed by § 10-11-108, C.R.S.

Nothing herein shall be construed in a manner that conflicts with the provisions of § 10-11-108(2) (b), C.R.S.

Section 7 Rules Regarding Consumer Protections

A. In order to comply with the requirements of § 10-11-106, C.R.S., no title entity shall issue a commitment for title insurance without first performing, or causing to be performed, a reasonable search and examination of the property records for the property to be insured. A search and examination shall be considered reasonable if it conforms to written standards and practices as determined by the title insurance company that is insuring the transaction. Nothing contained herein shall permit a title insurance company to create written standards and practices that do not comply with sound underwriting principles. Nothing contained herein shall prohibit title insurance companies from developing separate search and examination standards for different types of transactions or geographical areas.

B. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses to all recipients of any title insurance commitment the impairments of record concerning the property to be insured, the extent of coverage proposed, all proposed title exceptions, and in a clear and conspicuous manner, shall show whether the title insurance commitment does or does not commit to insure over or delete those exceptions to title specified therein, consistent with § 10-11-106, C.R.S.

C. Every title entity shall ensure that the title commitment, as may be amended or modified, fully discloses the record vested owner as shown by the applicable county real estate records as of the effective date shown on the commitment. If a circumstance exists which requires a person other than the vested owner to be shown, the title entity shall disclose, in a clear and conspicuous manner, the reason(s) for the deviation from the available county real estate records.

D. Every title entity shall ensure that, except for standard or preprinted exceptions, all proposed title exceptions on a title commitment for the issuance of an owners policy of title insurance shall make reference to the recording information of the document to be excepted from coverage. In the case of unrecorded yet known impairments, the title entity may use other identifiable marks on the document, such as date, names of parties, case numbers, etc. Title entities shall not make use of generic exceptions unless there is receipt of written instructions signed by the proposed insured authorizing the use of such exceptions or a request from the proposed insured for a specific policy form has been made which makes use of such exceptions.

E. Whenever a title entity provides the closing and settlement service that is in conjunction with the issuance of an owners policy of title insurance, it shall update the title insurance commitment from the date of issuance to as reasonably close to the time of closing as permitted by the applicable county real estate records. Such update shall include all impairments of record at the time of closing or as close thereto as permitted by the applicable county real estate records. The title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all undisclosed matters that appear of record prior to the time of closing.

F. As soon as reasonably practical prior to closing, every title entity shall notify in writing every prospective insured under an owners title insurance commitment the circumstances under which the title insurance company is responsible for all matters which appear of record prior to the time of recording (commonly referred to as “Gap Coverage”). This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance.

G. Every title insurance company shall be responsible to the proposed insured(s) subject to the terms and conditions of the title insurance commitment, other than the effective date of the title insurance commitment, for all matters which appear of record prior to the time of recording whenever the title insurance company, or its agent, conducts the closing and settlement service that is in conjunction with its issuance of an owners policy of title insurance and is responsible for the recording and filing of legal documents resulting from the transaction which was closed.

H. If a title entity undertakes to insure any person or entity against the possible adverse effect of any recorded lien, recorded encumbrance or other recorded interest, in accordance with § 10-11-106, C.R.S. and any other applicable law, it shall:

1. Delete such recorded lien, recorded encumbrance or other recorded interest from the schedule of exceptions in its title commitment and have on hand funds, securities, a bonded obligation, or letter of credit payable to the order of said title entity, adequate to discharge such lien, encumbrance or other interest in the event said lien, encumbrance or other interest is perfected to the detriment or possible detriment of the person or entity insured, or any successor in interest to such person or entity; or

2. Insure over and reflect such recorded lien, recorded encumbrance or other recorded interest in the schedule of exceptions in its title commitment, and receive an appropriate indemnity from the responsible party; or

3. Insure over the defect as long as in accordance with the title entity's sound underwriting practices and guidelines.

4. In the event of deletion, or insurance over, of any such defect or exception, the title entity shall not raise as a defense to any claim based on or arising out of such defect or exception that the insured assumed, agreed to, or had knowledge of the said defect or exception.

I. All title insurance entities shall comply with the "good funds law" contained in § 38-35-125, C.R.S. In particular, no title entity that provides closing and settlement services for any real estate transaction shall disburse funds as a part of such services until the funds to be disbursed have been received and are either: Available for immediate withdrawal as a matter of right from the financial institution in which the funds have been deposited; or available for immediate withdrawal as a consequence of the agreement of the financial institution in which the funds are to be deposited or the financial institution upon which the funds are drawn. Any such agreement shall be made with or for the benefit of the person or entity providing closing and settlement services for a real estate transaction.

1. Notwithstanding the provisions of this Section 7(I), the entity providing closing and settlement services may advance funds, not to exceed five hundred dollars, on behalf of interested parties for the transaction to pay incidental fees for such items as tax certificates and recording costs or to cover minor changes in the closing adjustments.

2. A title entity may satisfy the requirements of this Section 7(I) by use of the Good Funds Agreement appended as Attachment C, without substantial amendment or modification. This is the only agreement approved by the Division for such purpose.

3. Nothing in this Section 7(I) shall be deemed to prohibit the recording of documents before such funds are available provided all necessary parties to the transaction consent in writing thereto.

4. The requirements of Section 7(I) above may be waived by the seller in the real estate transaction if:

   a. It is specified as part of written closing instructions in advance of closing that the seller waives the requirements set forth in Section 7(G) above and that the person or entity conducting the closing, unless such person or entity is the seller, is not to handle the receipt and disbursement of funds as part of the closing; and

   b. Any holder of a lien encumbering the property up to the time of closing agrees, in writing, to such waiver and further agrees, in writing, to release such lien immediately upon receipt of a check from the closing drawn in the amount of the outstanding indebtedness secured by such lien. Such an agreement shall obligate the lien holder to release such lien regardless of whether the payoff check received has been or will be honored.

5. Any seller who so requests as part of written closing instructions in advance of closing shall be entitled to receive the proceeds of closing in a cashier's check or in funds electronically transferred to an account specified by the seller.

J. No title entity shall provide closing and settlement services without receiving written instructions from all necessary parties. All amendments to existing written instructions must be in writing.

K. Every title entity shall be responsible for properly conducting each closing or settlement service and recording such documents as it is directed in writing to record in conjunction therewith, for each transaction in which such title entity charges and collects a fee.

L. Each title entity shall notify in writing, at the time of delivery of the title insurance commitment, every prospective insured in an owner's title insurance commitment for a single family residence (including a condominium or townhouse unit) of that title entity's general requirements for the deletion of an exception or exclusion to coverage relating to unfiled mechanics or materialmans liens, except when said coverage or insurance is extended to the insured under the terms of the policy. This notice shall be clear and conspicuous, reasonably understandable, and designed to call attention to its nature and significance. Notwithstanding the foregoing, nothing contained in this Section 7(L) shall be deemed to impose any requirement upon any title insurance company to provide mechanics or materialmans lien coverage.

M. Each title entity shall exercise reasonable efforts to ensure that the acts of its employees and other authorized agents performed within the scope of the person's employment, contract, or agency agreement with the title entity, including closing agents and title insurance agencies, comply with all laws and regulations concerning the business of title insurance.

N. Each title entity shall maintain adequate documentation and records sufficient to show compliance with this regulation and Title 10 of the Colorado Revised Statutes for a period of not less than seven (7) years, except as otherwise permitted by law.

Section 8 Rules Regarding Agent Licensing

A. To demonstrate compliance with § 10-11-116(2), C.R.S., the title entity seeking licensure shall submit a notarized letter from an accountant verifying that upon a limited review of the title entity's books and records performed for this purpose, the accountant reasonably believes the title entity has a net worth at least equal to the minimum amount set forth in § 10-11-116 (2), C.R.S., or the title entity possesses actual paid-in cash capital of at least the amount set forth in § 10-11-116 (2), C.R.S.

B. Every title entity shall disclose every affiliated business arrangement in a form acceptable to the Commissioner. Such disclosure shall be completed with every new or renewal license application and within thirty (30) days of any changes of the disclosed information.

Section 9 Rules Regarding Fiduciary Duties

A. All title entities and their authorized agents in possession of funds received and belonging to others shall maintain the funds in a fiduciary capacity in a separate fiduciary fund account or accounts supported by books and records sufficient to identify such funds. The fiduciary fund account(s) shall be identified as "fiduciary fund", "trust account" or "escrow account", or identified similarly. These funds include but are not limited to underwriter portions of title insurance premiums, earnest money deposits, loan proceeds, sellers' proceeds, and homeowners association dues.

B. All fiduciary funds shall be maintained in an account separate from other monies and assets of the title entity. Commingling of other monies and assets of the title entity with fiduciary funds is prohibited. Notwithstanding the foregoing, nothing herein shall prohibit the advancement of funds authorized pursuant to § 38-35-125 (2), C.R.S.

C. All fiduciary funds shall be deposited within three business days with a state or federal bank, or a savings and loan association whose depositors are insured by an instrumentality of the United States Government, unless otherwise directed in writing by all parties to the transaction that established the need for the fiduciary funds to be deposited with the title entity.

D. Except as otherwise consented to in writing by the parties to a transaction establishing the need for fiduciary funds, a title entity or its authorized agent shall not use such fiduciary funds for any purpose other than the purpose or purposes set forth in the written agreement for which the fiduciary funds were deposited with the title entity.

E. Fiduciary funds shall not be deposited by a title entity into a treasury management account, sweep account, or any other type of investment account unless and until prior, written authorization has been obtained from all necessary parties for whom said funds are being held by the title entity.

F. A title entity shall not earn interest on fiduciary funds unless disclosure is made to all necessary parties to a transaction that interest is or has been earned. Said disclosure must offer the opportunity to receive payment of any interest earned on such funds beyond any administrative fees as may be on file with the division. Said disclosure must be clear and conspicuous, and may be made at any time up to and including closing.

G. Until a title entity receives written instructions pertaining to the holding of fiduciary funds, in a form agreeable to the title entity, it shall comply with the following:

1. The title entity shall deposit funds into an escrow, trust, or other fiduciary account and hold them in a fiduciary capacity.

2. The title entity shall use any funds designated as “earnest money” for the consummation of the transaction as evidenced by the contract to buy and sell real estate applicable to said transaction, except as otherwise provided in this section. If the transaction does not close, the title entity shall:

    a. Release the earnest money funds as directed by written instructions signed by both the buyer and seller; or

    b. If acceptable written instructions are not received, uncontested funds shall be held by the title entity for 180 days from the scheduled date of closing, after which the title entity shall return said funds to the payor.

3. In the event of any controversy regarding the funds held by the title entity (not withstanding any termination of the contract), the title entity shall not be required to take any action unless and until such controversy is resolved. At its option and discretion, the title entity may:

    a. Await any proceeding; or

    b. Interplead all parties and deposit such funds into a court of competent jurisdiction, and recover court costs and reasonable attorney and legal fees; or

    c. Deliver written notice to the buyer and seller that unless the title entity receives a copy of a summons and complaint or claim (between buyer and seller), containing the case number of the lawsuit or lawsuits, within 120 days of the title entity’s written notice delivered to the parties, title entity shall return the funds to the depositing party.

4. Nothing herein shall be read as relieving the responsibilities, if any, of any title entity in complying with the Colorado unclaimed property act, § 38-13-101, et seq., C.R.S.

Section 10 Enforcement

Noncompliance with this Regulation, whether defined or reasonably implied under this regulation 3-5-1, may result, after proper notice and hearing, in the imposition of any of the sanctions made available in the Colorado statutes pertaining to the business of insurance or other laws which include the imposition of fines, issuance of cease and desist orders, and/or suspensions or revocation of license. Among others, the penalties provided for in § 10-3-1108, C.R.S. may be applied.

Section 11 Severability

If any of the provisions of this regulation shall be held invalid or unenforceable, this regulation shall be construed as if not containing such provisions and the validity, legality and enforceability of the remaining provisions of this regulation shall not be affected or impaired in any way.

Section 12 Incorporated Materials

The following are hereby incorporated by reference as written on or before the effective date of this regulation. This rule does not include later amendments to or editions of the incorporated material. A copy of these references may be examined at any state publications depository library. For additional information regarding how to obtain a copy please contact the Colorado Division of Insurance, 1560 Broadway Ste 850, Denver, CO 80202.

A. The HUD policy statement 1996-2, which is the Policy Statement on Sham Controlled Business Arrangements.

B. The HUD policy statement 1996-4, which is the Statement of Enforcement Standards: Title Insurance Practices in Florida; Final Rule.

C. The federal Real Estate Settlement Procedures Act, 12 U.S.C. sec. 2601 et seq.

D. The American Land Title Association (ALTA) Closing Protection Letter & Explanation (revised 01-01-2008); the ALTA Closing Protection Letter – Limitations (revised 01-01-2008); and the ALTA Closing Protection Letter – Single Transaction Limited Liability (revised 01-01-2008).

Section 13 Effective Date

This regulation is effective May 1, 2010.

Section 14 History

Originally promulgated in 1972 as 72-3.
Amended regulation in 1988 as 88-5.
Amended regulation in 1989 as 89-2.
Amended regulation in 1992 as 3-5-1.
Amended regulation in 1996.
Amended regulation, effective January 1, 2002.
Amended regulation effective August 31, 2005.
Regulation 3-5-1 repealed and repromulgated in full effective January 1, 2007.
Regulation 3-5-1 repealed and repromulgated in full effective May 1, 2010.

APPENDIX A

GOOD FUNDS AGREEMENT

THIS GOOD FUNDS AGREEMENT ("Agreement") is entered into as of this ____ day of _____ , by and among _____ ("Mortgage Lender"), _____ ("Closing Agent"), _____ ("Bank") and _____ ("Warehouse Lender").

RECITALS

A. Colorado Revised Statutes Section 38-35-125 (the "Statute") establishes certain requirements for the collection and availability of funds which must be satisfied to enable a provider of closing and settlement services for real estate transactions to disburse such funds;

B. The Mortgage Lender is presently engaged in the making of one or more loans ("Loan or Loans") to individuals or entities ("Borrowers") or purchasing Loans made by other lenders. The Loans to which this Agreement pertains shall in every case be evidenced by a promissory note ("Note") executed by the pertinent Borrower and secured by a _____ priority mortgage or deed of trust ("Mortgage") on real property improved by a 1-4 family residence.

C. The Bank is a "financial institution", as defined in the Statute.

D. The Bank/Warehouse Lender has extended a credit facility to the Mortgage Lender, pursuant to which the Bank/Warehouse Lender has agreed, upon certain terms and conditions, to advance funds (an "Advance") to the Mortgage Lender for the purpose of enabling the Mortgage Lender to make Loans. Each Advance by the Bank/Warehouse Lender shall be secured by the Note and Mortgage executed in connection with the Loan for which the Advance is made. The term "Bank/Warehouse Lender" shall mean (i) the Bank if no separate warehouse lender is a party or (ii) the Warehouse Lender if, the warehouse lender is not the Bank.

E. In order to comply with the Statute, the parties wish to agree upon an arrangement whereby the Closing Agent may, immediately upon the closing of Loans, disburse funds delivered to it in connection with such closings.

F. The Bank may issue Reservation Numbers (as defined below) for Loans to be funded by the Mortgage Lender’s check drawn upon the Bank or its affiliated bank, _____ account # _____ ("Good Funds Account") and the Bank is willing to agree with the Lender and the Closing Agent that it will fund checks drawn upon the Good Funds Account (“Good Funds Check”) for the funding of Loans and the Closing Agent may disburse the funds immediately upon the closing of Loans, upon the terms set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are hereby incorporated and made a part of this Agreement.

2. Responsibilities of Mortgage Lender. The Mortgage Lender shall, prior to the closing of a Loan, prepare and deliver to the Closing Agent all necessary Loan documents including, without limitation, a HUD-1 loan settlement statement. Alternatively, if the Closing Agent or any third party prepares the Loan documents, the Mortgage Lender shall review and approve the Loan documents.

3. Responsibilities of the Closing Agent. The Closing Agent shall be responsible to do the following, at or prior to the closing of each Loan:

(a) During the Bank's normal business hours, on or before the day of disbursement of funds, the Closing Agent shall obtain from the Bank or its designee by telephone as specified on the signature page, a reservation number which has been issued by the Bank for the Good Funds Check (the "Reservation Number").

(b) The Closing Agent shall verify that the amount of the check delivered to it by the Mortgage Lender and drawn on the Bank does not exceed the face amount of the Loan less all discount points charged in connection with the Loan, as set forth on the HUD-1 settlement statement.

(c) The Closing Agent shall make disbursements in accordance with the HUD-1 settlement statement and do all other things and obtain all other documents that it deems necessary in order to comply with the Mortgage Lender's closing instructions that are applicable to the Loan and issue a mortgagee's policy of title insurance in favor of the Mortgage Lender, insuring that the Mortgage is a _____ lien on real property improved by a 1-4 family residence as described therein. The duties of the Closing Agent hereunder shall not include the preparation of legal documents. The Closing Agent shall in each case forward the original Mortgage to the proper governmental authority for recording. The Note and all other Loan documents shall be delivered to the Mortgage Lender within two (2) business days after disbursement of funds, unless the Closing Agent is requested and agrees to forward the Loan package to the Bank/Warehouse Lender or its designee as specified on the signature page. For the purposes of perfecting the Bank's/Warehouse Lender's security interest therein pursuant to § 4-9-313(c), C.R.S., the Closing Agent shall be the bailee of

the Bank/Warehouse Lender and agrees to hold possession of the Note and all other Loan documents for the benefit of the Bank/Warehouse Lender until the Closing Agent delivers the Loan documents to the Mortgage Lender or the Bank/Warehouse Lender.

(d) In the event Loan proceeds are not disbursed within two (2) business days after issuance of a Reservation Number, the Closing Agent shall so notify the Mortgage Lender and return the check to the Mortgage Lender.

4. Bank's Agreement to Honor Checks. The Bank shall have no obligation under this Agreement or otherwise to issue a Reservation Number for any check drawn on the Good Funds Account. However, if (1) the Bank does issue a Reservation Number, (2) the Bank has given a Reservation Number to the Closing Agent, and (3) the Closing Agent closes a Loan and disburses funds, then issuance of the Reservation Number shall constitute the warranty by, and unconditional agreement between the Bank and the Closing Agent that:

(a) The Bank shall honor and pay the Good Funds Check upon presentment without reference to amounts on deposit in any account;

(b) Issuance of the Reservation Number constitutes an acceptance or certification of the Good Funds Check by the Bank, pursuant to § 4-3-409, C.R.S.;

(c) The Good Funds Check shall be deemed, with respect to the ability of the Bank to stop payment, to be the equivalent of a cashier's check issued by the Bank;

(d) Funds represented by the Good Funds Check are not subject to offset by the Bank; and

(e) The Bank shall not honor any stop-payment order or direction from the Mortgage Lender with respect to the Good Funds Check.

Mortgage Lender agrees to pay, and indemnify Closing Agent for, all losses sustained as a result of a dishonor of a Good Funds Check that the Bank is obligated to honor as set out in this paragraph 4. Notwithstanding any other provision of this Agreement, nothing in this Agreement is intended to alter the normal check collection and clearance time periods for a Good Funds Check.

5. Insured Closing Letter. For the duration of this Agreement, the Closing Agent shall obtain and cause to remain in effect insured closing letters from the Title Insurance

Company in form and content acceptable to the Bank/Warehouse Lender (the "Insured Closing Letters"). The Insured Closing Letters shall be addressed to the Bank/Warehouse Lender and to the Mortgage Lender and shall not be cancelable except with ten (10) days prior written notice to the Bank/Warehouse Lender and the Mortgage Lender. A copy of the Insured Closing Letter shall be delivered by the Mortgage Lender to the Bank/Warehouse Lender prior to any request for confirmation pursuant to paragraph 3 (a) hereof.

6. Termination. This Agreement shall apply to all Loans of the Mortgage Lender which are now or hereafter closed by the Closing Agent for which a Reservation Number is requested and given, prior to termination of this Agreement. This Agreement may be terminated by any party hereto, immediately upon the giving of written notice to all other parties. The rights and obligations of the parties with respect to all Good Funds Checks for which a Reservation Number has been issued by the Bank prior to termination of this Agreement shall survive any such termination.

7. Notices. All notices which are required or may be given in connection with this Agreement shall be effective upon the earlier of receipt or three (3) days after the same are sent by certified mail, return receipt requested, with postage prepaid, to the addresses contained on the signature page.

8. Miscellaneous:

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

(b) Nothing in this Agreement shall be deemed to supersede or modify the rights and obligations of the Mortgage Lender and the Bank/Warehouse Lender vis-à-vis each other under any loan agreement or other documents that may currently be in place with respect to the Bank's/Warehouse Lender's credit facility with the Mortgage Lender ("Other Agreement or Documents"), and the Bank/Warehouse Lender shall be entitled to exercise all rights and remedies granted in any such Other Agreements or Documents, as specified therein except that the Bank's agreement to honor a Good Funds Check under paragraph 4 shall not be altered or impaired by such Other Agreement or Documents.

(c) This Agreement may not be assigned by the Closing Agent or Mortgage Lender without the prior written consent of the Bank and the Warehouse Lender, if any. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Bank and the Warehouse Lender, if any, and upon

any permitted successors and assigns of the Closing Agent or the Mortgage Lender.

(d) This Agreement may be amended or modified only by a written instrument executed by the parties hereto and only as permitted by Division of Insurance Regulation 3-5-1.

(e) No right or interest under this Agreement shall be waived except by written instrument executed by the party against whom such waiver is sought. Any waiver of any particular default or failure to perform hereunder or of any provision hereof shall not constitute a waiver of any other default or failure to perform hereunder or of the same default arising again in the future.

(f) In the event of any litigation or arbitration hereunder, the prevailing party shall be entitled to recover its attorneys fees and costs in addition to the award granted by the court or arbitrator.

(g) The rights and remedies of each party under this Agreement shall be cumulative, both as to other rights or remedies under this Agreement and as to rights and remedies otherwise provided or available under other agreements or at law, by statute or in equity. The exercise or partial exercise of any such right or remedy shall not preclude the exercise of any other right or remedy.

(h) No Closing Agent, Mortgage Lender, or Bank/Warehouse Lender shall be required to enter into this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Good Funds Agreement as of the date first above written.

Bank:	**Closing Agent:**
By	By
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
FAX No.:	FAX No.:
E-mail	E-mail
Attention:	Attention:

WAREHOUSE LENDER:_____**MORTGAGE LENDER:**

By:	By:
Name:	Name:
Title:	Title:
Address:	Address:
Telephone No.:	Telephone No.:
FAX No.:	FAX No.:
E-mail	E-mail
Attention:	Attention:

FOR RESERVATION NUMBERS pursuant to paragraph 3(a) contact:
Name: _____

Address:_____
Address:_____
Telephone No.:_____
E-mail: _____
Bank Authorization: _____
Name & Title

FOR LOAN DOCUMENT DELIVERY pursuant to paragraph 3(c) deliver to:

Name:_____

Address:_____
Address:_____
Telephone No.:_____
E-mail: _____
Bank/Warehouse Lender Authorization: _____
Name & Title